

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE DISTRICT OF ALASKA**

3  
4       FREDERICK BULLOCK & RENEE  
5       BULLOCK,

6                                   Plaintiffs,

7                                   v.

Case No. 4:23-cv-00017-SLG-KFR

8       WELLS FARGO BANK, N.A. aka WELLS  
9       FARGO HOME MORTGAGE,

10                                  Defendant.

11                                   **REPORT AND RECOMMENDATION RE MOTION TO DISMISS**

12           Before the Court is a Motion to Dismiss (“Motion”) filed by Defendant Wells  
13       Fargo Bank, N.A. aka Wells Fargo Home Mortgage.<sup>1</sup> Plaintiffs Frederick and Renee  
14       Bullock, who represent themselves in this matter, filed a Response opposing the  
15       Motion,<sup>2</sup> to which Defendant replied.<sup>3</sup> Oral argument on the Motion was not  
16       requested and was not necessary for the Court’s recommendation. The Court finds  
17       that Plaintiffs’ claims are barred by the doctrine of claim preclusion and that  
18       amendment would be both futile and unduly prejudicial to Defendant. The Court  
19       therefore recommends that the Motion be **GRANTED** and that Plaintiffs’ claims be  
20       **DISMISSED with prejudice.**

21                   **I.       BACKGROUND**

22           In November 1994, Frederick Bullock obtained a loan from a mortgage  
23       company to purchase residential property located in North Pole, Alaska (“North Pole  
24       Property”).<sup>4</sup> The loan was secured by a deed of trust on the property in favor of the  
25       mortgage company.<sup>5</sup> Through various assignments, Defendant became the

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<sup>1</sup> Doc. 23.

27                   <sup>2</sup> Doc. 24.

28                   <sup>3</sup> Doc. 25.

<sup>4</sup> Doc. 6-1 at 10.

<sup>5</sup> *Id.*

1 beneficiary of the deed of trust and began administering the loan.<sup>6</sup> In January 2010,  
2 Defendant initiated a foreclosure on the North Pole Property, and in December 2010,  
3 Defendant acquired the property following a foreclosure sale.<sup>7</sup>

#### 4 **A. First Action**

5 In December 2013, Plaintiffs, initially representing themselves, commenced  
6 an action in Alaska state court against Defendant and several other entities.<sup>8</sup> The  
7 defendants removed the action to federal district court based on diversity  
8 jurisdiction.<sup>9</sup> Plaintiffs subsequently retained counsel and filed an amended  
9 complaint, which named Defendant as the sole defendant.<sup>10</sup> In their amended  
10 complaint, Plaintiffs alleged that they fully paid off the North Pole Property loan  
11 several years before the foreclosure sale.<sup>11</sup> Plaintiffs suggested that their mortgage  
12 payments were improperly credited toward another mortgage on a different  
13 property, also owned by Frederick Bullock, that was located in Anchorage  
14 (“Anchorage Property”).<sup>12</sup> Plaintiffs further alleged that they had “acquiesced in  
15 demands by [Defendant] and paid far in excess of the amounts required to discharge  
16 the mortgages on both the North Pole Property and the Anchorage Property.”<sup>13</sup>  
17 Plaintiffs sought to recover damages, to set aside the foreclosure on the North Pole  
18 Property, and to compel an accounting of the mortgages on the North Pole Property  
19 and the Anchorage Property.<sup>14</sup>

20 Defendant moved for summary judgment, asking the District Court to dismiss  
21 Plaintiffs’ claims and quiet title to the North Pole Property.<sup>15</sup> Plaintiffs’ counsel

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22 <sup>6</sup> *Id.* at 19.

23 <sup>7</sup> *Id.* at 21.

24 <sup>8</sup> Case No. 3:14-cv-00010-TMB, Doc. 3-1. The Court takes judicial notice of court filings in  
25 Plaintiffs’ first action that are referenced in this report and recommendation and that have  
not already been judicially noticed. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988,  
999 (9th Cir. 2018).

26 <sup>9</sup> Case No. 3:14-cv-00010-TMB, Doc. 1.

<sup>10</sup> Case No. 3:14-cv-00010-TMB, Docs. 34, 35.

<sup>11</sup> Case No. 3:14-cv-00010-TMB, Doc. 35 at 2, ¶¶ 7, 9.

<sup>12</sup> *Id.* at 2, ¶ 6.

<sup>13</sup> *Id.* at 3, ¶ 16.

<sup>14</sup> *Id.* at 4, ¶¶ a-d.

<sup>15</sup> Case No. 3:14-cv-00010-TMB, Doc. 52.

1 withdrew from the case and Plaintiffs, on their own behalf, responded in opposition  
2 to Defendant's motion.<sup>16</sup> In their response and in an additional document Plaintiffs  
3 later filed in support of their response, Plaintiffs insisted that they satisfied the  
4 North Pole Property loan in 2000 and that Defendant committed "fraud [in] how  
5 they attached themselves to [Plaintiffs'] [f]inancial [c]redit report statements and  
6 [b]anking accounts."<sup>17</sup> Plaintiffs explained that Defendant wrongly applied  
7 Plaintiffs' payments toward the Anchorage Property loan instead of toward the North  
8 Pole Property loan because the two loans shared the same account number.<sup>18</sup>  
9 Plaintiffs further alleged that Defendant "mishandl[ed]" and acted with "extreme  
10 negligence" with respect to Frederick Bullock's personal information, that Defendant  
11 mailed relevant documents to the "wrong address," and that there were  
12 discrepancies between information Defendant used and information in a credit  
13 report for Frederick Bullock.<sup>19</sup> All told, according to Plaintiffs, Defendant's actions  
14 constituted "servicing abuse, poor debt collection practices, misappropriation of  
15 funds, and abuse of credit."<sup>20</sup>

16 In April 2016, the District Court granted Defendant's motion for summary  
17 judgment.<sup>21</sup> In its order, the District Court rejected Plaintiffs' contention that they  
18 paid off the mortgage on the North Pole Property in 2000,<sup>22</sup> concluding that this  
19 contention lacked any evidentiary support and that Defendant's uncontradicted  
20 evidence established that the mortgage "was *not* paid off in 2000, or at any other  
21 time."<sup>23</sup> The District Court further considered the other issues Plaintiffs raised and  
22 "f[ound] them to be inapplicable or without merit."<sup>24</sup> Accordingly, the District Court  
23 issued a judgment dismissing Plaintiffs' claims and declaring that title to the North

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24 <sup>16</sup> Case No. 3:14-cv-00010-TMB, Docs. 57, 58, 60.

25 <sup>17</sup> Case No. 3:14-cv-00010-TMB, Doc. 60 at 2.

26 <sup>18</sup> Case No. 3:14-cv-00010-TMB, Doc. 63 at 8.

27 <sup>19</sup> Case No. 3:14-cv-00010-TMB, Doc. 60 at 2-4.

28 <sup>20</sup> Case No. 3:14-cv-00010-TMB, Doc. 63 at 1.

<sup>21</sup> Case No. 3:14-cv-00010-TMB, Doc. 67.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> *Id.* at 10.

<sup>24</sup> *Id.* at 16.

1 Pole Property was vested in Defendant free and clear of any interests of Plaintiffs.<sup>25</sup>  
2 Plaintiffs did not appeal.

### 3 **B. Second Action**

4 In May 2023, Plaintiffs commenced a second action against Defendant in  
5 Alaska state court.<sup>26</sup> In August 2023, Defendant removed the action to federal  
6 district court based on diversity jurisdiction.<sup>27</sup> Defendant then filed a motion to  
7 dismiss Plaintiffs' complaint pursuant to Federal Rule of Civil Procedure 12(b)(6),  
8 and a request for judicial notice of various documents, including court documents  
9 from the prior action.<sup>28</sup> Plaintiffs filed a response in opposition to the motion to  
10 dismiss, in which Plaintiffs also sought leave to amend and supplement their  
11 complaint.<sup>29</sup> Plaintiffs also filed an Amended Complaint,<sup>30</sup> which Defendant moved  
12 to strike on timeliness and other procedural grounds.<sup>31</sup> Plaintiffs subsequently filed  
13 a motion to accept their late-filed Amended Complaint.<sup>32</sup>

14 In December 2023, the District Court issued an order (1) granting Plaintiffs'  
15 request for leave to amend their initial complaint, (2) granting Plaintiffs' motion to  
16 accept the late-filed Amended Complaint, (3) granting Defendant's request for  
17 judicial notice, (4) denying Defendant's motion to strike the Amended Complaint,  
18 and (5) denying Defendant's motion to dismiss without prejudice and with leave to  
19 file a renewed motion addressing the Amended Complaint.<sup>33</sup>

20 Plaintiffs' Amended Complaint asserts claims for (1) violations of the Fair  
21 Credit Reporting Act<sup>34</sup> ("FCRA") and (2) breach of contract.<sup>35</sup> In support of these  
22 claims, Plaintiffs allege that they did not default on the North Pole Property loan,

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23 <sup>25</sup> Case No. 3:14-cv-00010-TMB, Doc. 68.

24 <sup>26</sup> Doc. 1-1.

25 <sup>27</sup> Doc. 1.

26 <sup>28</sup> Doc. 5.

27 <sup>29</sup> Doc. 11.

28 <sup>30</sup> Doc. 13.

<sup>31</sup> Doc. 14.

<sup>32</sup> Doc. 18.

<sup>33</sup> Doc. 22.

<sup>34</sup> 15 U.S.C. §§ 1681-1681x.

<sup>35</sup> Doc. 13.

1 reasoning that Defendant incorrectly applied their payments toward that loan  
2 because Defendant used the same account number for the North Pole Property and  
3 the Anchorage Property.<sup>36</sup> Plaintiffs further allege that Defendant mailed documents  
4 pertaining to the North Pole Property loan to the incorrect address, facilitated  
5 “[i]dentity theft” by communicating Plaintiffs’ personal information to third parties,  
6 failed to disclose relevant information to Plaintiffs, and “mismanag[ed]” Plaintiffs’  
7 funds.<sup>37</sup> Plaintiffs characterize Defendant’s alleged actions as “servicing abuse.”<sup>38</sup>  
8 Plaintiffs seek to recover money damages, as well as costs and attorney’s fees  
9 associated with this litigation.<sup>39</sup>

10 In January 2024, Defendant filed the present Motion to Dismiss Plaintiffs’  
11 Amended Complaint.<sup>40</sup> Defendant requests dismissal of the Amended Complaint in  
12 its entirety, arguing that Plaintiffs’ claims are barred by claim preclusion and the  
13 applicable statutes of limitations.<sup>41</sup> Defendant submits that dismissal without leave  
14 to amend is appropriate because Plaintiffs’ claims cannot be cured by amendment  
15 and were brought in bad faith, and because prolonging this litigation would  
16 prejudice Defendant.<sup>42</sup>

17 Plaintiffs filed a Response urging the Court to deny the Motion.<sup>43</sup> Plaintiffs  
18 reiterate and expand on the claims brought in their Amended Complaint, and argue  
19 that even if their claims are barred by claim preclusion or any statutes of limitations,  
20 dismissal is not warranted because of “excusable neglect,” their lack of legal counsel  
21 to assist them, and the “extreme injustice” of the events underlying their claims.<sup>44</sup>  
22 Plaintiffs attach various exhibits to their Response, including excerpts from their  
23 mortgage file, a letter from Defendant denying a request by Plaintiffs for information

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24 <sup>36</sup> *Id.* at 1, 4, ¶ 2.

25 <sup>37</sup> Doc. 13 at 4–9, ¶¶ 3–5, 7–10, 14.

26 <sup>38</sup> *Id.* at 9, ¶ 14.

27 <sup>39</sup> *Id.* at 9.

28 <sup>40</sup> Doc. 23.

<sup>41</sup> *Id.* at 8–17; Doc. 25.

<sup>42</sup> Doc. 23 at 17–19.

<sup>43</sup> Doc. 24.

<sup>44</sup> *Id.* at 8.

1 related to their account, and an excerpt from a credit report dated September 23,  
2 2010.<sup>45</sup>

## 3 **II. LEGAL STANDARDS**

4 Federal Rule of Civil Procedure 12(b)(6) requires dismissal for a complaint's  
5 "failure to state a claim upon which relief can be granted." A self-represented  
6 plaintiff's complaint is "held to less stringent standards than formal pleadings  
7 drafted by lawyers."<sup>46</sup> Nevertheless, "[t]o survive a motion to dismiss [pursuant to  
8 Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true,  
9 to 'state a claim to relief that is plausible on its face.'"<sup>47</sup> A complaint must provide  
10 "well-pleaded facts, not legal conclusions, that 'plausibly give rise to an entitlement  
11 to relief.'"<sup>48</sup>

12 A district court may consider a statute of limitations or claim preclusion  
13 defense raised in a Rule 12(b)(6) motion to dismiss.<sup>49</sup> A defendant seeking to  
14 establish claim preclusion "must carry the burden of establishing all necessary  
15 elements."<sup>50</sup>

## 16 **III. DISCUSSION**

### 17 **A. Plaintiffs' Claims Are Barred by the Doctrine of Claim Preclusion.**

18 Defendant maintains that Plaintiffs' claims are barred by the doctrine of claim  
19 preclusion because Plaintiffs raised the same claims in their previous proceeding  
20 before the District Court.<sup>51</sup> Defendant details the history of the previous proceeding,  
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22 <sup>45</sup> Doc. 24-1.

23 <sup>46</sup> *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 923 n.4 (9th Cir. 2011)  
(internal quotation marks omitted) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)); see  
24 also *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (instructing courts to liberally construe  
the filings of a self-represented plaintiff and afford the plaintiff the benefit of any reasonable  
doubt).

25 <sup>47</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.  
544, 570 (2007)).

26 <sup>48</sup> *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1176 (9th Cir. 2021) (first citing *Twombly*,  
550 U.S. at 570; and then quoting *Iqbal*, 556 U.S. at 679).

27 <sup>49</sup> See *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1053 (9th Cir. 2007); *Seven  
Arts Filmed Entm't Ltd. v. Content Media Corp.*, 733 F.3d 1251, 1254 (9th Cir. 2013).

28 <sup>50</sup> *Taylor v. Sturgell*, 553 U.S. 880, 907 (2008) (quoting 18 Wright & Miller, FEDERAL PRACTICE  
& PROCEDURE § 4405, at 82 (2d ed. 2002)).

<sup>51</sup> Doc. 23 at 12-16.

1 including its resolution by way of the District Court’s grant of summary judgment to  
2 Defendant. Defendant contends that the District Court’s summary judgment order  
3 “has the preclusive effect of barring relitigation between the same parties not only  
4 of claims that were raised in the [p]rior [a]ction, but also of those relevant claims  
5 that could have been raised then.”<sup>52</sup> Defendant notes that in the current action,  
6 Plaintiffs offer some evidence that they did not present to the District Court in the  
7 prior action.<sup>53</sup> However, Defendant argues, Plaintiffs’ intent in submitting this  
8 evidence is to relitigate the contention that they paid off the North Pole Property  
9 loan and that therefore “some sort of mortgage servicing error occurred.”<sup>54</sup>  
10 Plaintiffs do not directly dispute these arguments, asserting instead that they had  
11 “no . . . way to prove” their claims during the prior proceeding.<sup>55</sup>

12 “A fundamental precept of common-law adjudication . . . is that a right,  
13 question or fact distinctly put in issue and directly determined by a court of  
14 competent jurisdiction . . . cannot be disputed in a subsequent suit between the same  
15 parties or their privies.”<sup>56</sup> Under the doctrine of claim preclusion, “a final judgment  
16 forecloses successive litigation of the very same claim, whether or not relitigation  
17 of the claim raises the same issues as the earlier suit.”<sup>57</sup> By “precluding parties from  
18 contesting matters that they have had a full and fair opportunity to litigate,” claim  
19 preclusion protects against “the expense and vexation attending multiple lawsuits,  
20 conserv[es] judicial resources, and foste[rs] reliance on judicial action by  
21 minimizing the possibility of inconsistent decisions.”<sup>58</sup>

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22 <sup>52</sup> *Id.* at 16.

23 <sup>53</sup> *Id.*

24 <sup>54</sup> *Id.*

25 <sup>55</sup> See Doc. 24 at 3.

26 <sup>56</sup> *Montana v. United States*, 440 U.S. 147, 153 (1979) (internal quotation marks and citation omitted).

27 <sup>57</sup> *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008); see also *Weber v. State*, 166 P.3d 899, 901 (Alaska 2007) (“Once a judgment on the merits of an action has been entered, [claim preclusion] applies to bar relitigation of later claims between the same parties on the claims that could have been brought in the first proceeding.”).

28 <sup>58</sup> *Taylor*, 553 U.S. at 892 (internal quotation marks and alterations omitted) (quoting *Montana*, 440 U.S. at 153–54); see also *Weber*, 166 P.3d at 902 (“The doctrine [of claim



1 If a federal court exercising its diversity jurisdiction issued the arguably  
2 preclusive decision, the preclusion rules of the forum state in that case apply.<sup>59</sup>  
3 Here, the District Court in the prior case was sitting in diversity jurisdiction;<sup>60</sup>  
4 therefore, the Court uses Alaska claim preclusion law to determine the preclusive  
5 effect of the District Court’s 2016 judgment.

6 In Alaska, a prior judgment has claim-preclusive effect when it is “(1) a final  
7 judgment on the merits, (2) from a court of competent jurisdiction, (3) in a dispute  
8 between the same parties (or their privies) about the same cause of action.”<sup>61</sup> If  
9 claim preclusion applies, “it precludes relitigation . . . not only of claims that were  
10 raised in the initial proceeding, but also of those relevant claims that could have  
11 been raised then.”<sup>62</sup> Accordingly, whether a cause of action is the same “does not  
12 rest on the legal theory asserted but rather on whether the claims [in each case]  
13 arise out of the same transaction—the same set of underlying facts.”<sup>63</sup> Courts  
14 “exercise pragmatism in [determining whether a cause of action is the same] and  
15 consider whether the facts are related in time, space, origin, or motivation, whether  
16 they form a convenient trial unit, and whether their treatment as a unit conforms to  
17 the parties’ expectations or business understanding or usage.”<sup>64</sup>

18 All three requirements for claim preclusion to apply under Alaska law are met  
19 here. First, Plaintiffs’ first suit was dismissed on summary judgment;<sup>65</sup> this  
20 resolution is a final judgment on the merits.<sup>66</sup> Second, Plaintiffs do not allege that

21 preclusion] implements the ‘generally recognized public policy’ that there must be some  
22 final and conclusive end to litigation.” (quoting *Nelson v. Jones*, 787 P.2d 1031, 1033 (Alaska  
1990))).

23 <sup>59</sup> *Taylor*, 553 U.S. at 891. In contrast, if the prior case rested on a federal question, then  
24 federal claim preclusion rules would apply. See *Sullivan v. First Affiliated Sec., Inc.*, 813 F.2d  
1368, 1376 (9th Cir. 1987) (recognizing that the claim-preclusive impact of a federal  
judgment is a question of federal law).

25 <sup>60</sup> Case No. 3:14-cv-00010-TMB, Doc. 67 at 2.

26 <sup>61</sup> *Patterson v. Infinity Ins.*, 303 P.3d 493, 497 (Alaska 2013).

27 <sup>62</sup> *Windel v. Matanuska-Susitna Borough*, 496 P.3d 392, 397 (Alaska 2021).

28 <sup>63</sup> *Angleton v. Cox*, 238 P.3d 610, 614 (Alaska 2010).

<sup>64</sup> *Patterson*, 303 P.3d at 497–98 (citation omitted) (first quoting *Angleton*, 238 P.3d at 614;  
and then quoting *Alderman v. Iditarod Props. Inc.*, 959 P.2d 1240, 1243 (Alaska 1998)).

<sup>65</sup> Case No. 3:14-cv-00010-TMB, Doc. 67 at 17–18.

<sup>66</sup> See *Patterson*, 303 P.3d at 497 (“A dismissal based on summary judgment constitutes a  
final judgment on the merits.”).



1 the District Court lacked jurisdiction to issue a final judgment in their prior action,  
2 and the Court sees no sign that the District Court lacked such jurisdiction. Third,  
3 the parties in the prior action were identical to those in this case,<sup>67</sup> and the  
4 underlying facts are virtually indistinguishable.

5 In the prior case, Plaintiffs broadly alleged that Defendant engaged in  
6 “servicing abuse, poor debt collection practices, misappropriation of funds, and  
7 abuse of credit,”<sup>68</sup> and sought to recover damages, to set aside the foreclosure on the  
8 North Pole Property, and to compel an accounting of the mortgages on the North  
9 Pole Property and the Anchorage Property.<sup>69</sup> More specifically, Plaintiffs alleged that  
10 they paid off their mortgage on the North Pole Property in 2000, that they ultimately  
11 paid more than was required to pay off that loan in response to Defendant’s  
12 “demands,” that Defendant nevertheless foreclosed on the North Pole Property, that  
13 one reason for the foreclosure was Defendant’s use of the same file number for both  
14 the North Pole Property and the Anchorage Property, that Defendant’s counsel  
15 improperly “altered” this file number in court filings, that Defendant refused to  
16 provide Plaintiffs with documents or other information pertaining to the two  
17 properties.<sup>70</sup> Plaintiffs also alleged that Defendant mailed relevant documents to the  
18 “wrong address,” mishandled Frederick Bullock’s personal information, and relied  
19 on information that was different from the information in a credit report for  
20 Frederick Bullock.<sup>71</sup> Plaintiffs rely on this same set of alleged facts—namely,  
21 Defendant’s handling of the North Pole Property mortgage throughout the history of  
22 the loan—to support each of their claims in the present action.<sup>72</sup> Because the same

23 <sup>67</sup> Case No. 3:14-cv-00010-TMB, Docs. 35, 67.

24 <sup>68</sup> Case No. 3:14-cv-00010-TMB, Doc. 63 at 1. Plaintiffs articulated these theories at the  
25 summary judgment stage in the prior action; their operative complaint did not articulate  
any specific legal theory upon which Plaintiffs intended to advance their claims.

26 <sup>69</sup> Case No. 3:14-cv-00010-TMB, Doc. 35 at 4, ¶¶ a-d.

27 <sup>70</sup> Case No. 3:14-cv-00010-TMB, Docs. 35 at 2-4, ¶¶ 6-7, 16, 18, 24-25; 60 at 4; 67 at 9.

28 <sup>71</sup> Case No. 3:14-cv-00010-TMB, Doc. 60 at 2-4.

<sup>72</sup> See Doc. 13 at 4-9, ¶¶ 2-5, 7-10, 14 (alleging that Defendant “co-mingled properties and  
collections” based on its use of the same account number for the two properties, foreclosed  
on the North Pole Property despite Plaintiffs’ satisfaction of their mortgage, mailed

1 set of facts grounds Plaintiffs' claims in both cases, Plaintiffs' causes of action are  
2 the same for purposes of claim preclusion.

3 To the extent Plaintiffs argue that claim preclusion should not apply because  
4 they did not have a full and fair opportunity to litigate the claims in their first suit,  
5 the Court disagrees. Plaintiffs suggest that they were unable to present evidence  
6 substantiating their claims in the first action because they did not have the benefit  
7 of professional legal assistance and because Defendant refused to disclose  
8 information crucial to their claims.<sup>73</sup> However, although the denial of a full and fair  
9 opportunity to litigate claims can prevent the application of claim preclusion,<sup>74</sup> this  
10 limited exception applies only if the requirements of due process were not afforded  
11 in the prior proceeding.<sup>75</sup> Neither Plaintiffs' self-representation for part of the prior  
12 proceeding nor their alleged lack of access to discoverable material constitutes a  
13 denial of due process such that Plaintiffs lacked the opportunity to litigate their  
14 claims.<sup>76</sup>

15 Therefore, the District Court's 2016 judgment in Defendant's favor precludes  
16 any claims that Plaintiffs raised in that suit or relevant claims they could have raised  
17 at that time.<sup>77</sup> As all of Plaintiffs' current claims were actually raised or are "merely  
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20 documents to an undesired address, facilitated "[i]dentity theft" by communicating  
21 Plaintiffs' personal information to third parties, failed to disclose relevant information to  
22 Plaintiffs, "mismanag[ed]" Plaintiffs' funds, and committed "servicing abuse" through all  
23 these actions).

24 <sup>73</sup> Doc. 24 at 1, 7-8.

25 <sup>74</sup> See *Patterson*, 303 P.3d at 499.

26 <sup>75</sup> See *Sengupta v. Univ. of Alaska*, 21 P.3d 1240, 1253-54 (Alaska 2001) (determining that  
27 plaintiff was given full and fair opportunity to litigate claims at administrative hearings  
28 where plaintiff was "afforded the right to introduce exhibits, rebut the adverse evidence,  
and subpoena, call, examine, cross-examine, and impeach witnesses," and where plaintiff  
could have appealed rejection of his grievance).

<sup>76</sup> In civil cases such as this one and the prior action, there is no right to representation by  
counsel. See *Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985). Moreover, the Court's  
conclusion that Plaintiffs' alleged lack of access to discoverable material does not support a  
finding that they lacked a full and fair opportunity to litigate their claims is bolstered by the  
fact that in the prior action, Plaintiffs never filed a motion to compel Defendant to provide  
any missing discovery.

<sup>77</sup> See *Windel*, 496 P.3d at 397.

1 a new legal theory derived from the same underlying facts alleged in [the] first case,”  
2 these claims are barred by claim preclusion.<sup>78</sup>

### 3 **B. Plaintiffs’ Claims Should Be Dismissed with Prejudice.**

4 Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend “shall  
5 be freely given when justice so requires.” In general, leave to amend a complaint  
6 “should be granted if it appears at all possible that the plaintiff can correct the  
7 defect[s].”<sup>79</sup> “The decision of whether to grant leave to amend nevertheless remains  
8 within the discretion of the district court, which may deny leave to amend due to  
9 ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failure  
10 to cure deficiencies by amendments previously allowed, undue prejudice to the  
11 opposing party by virtue of allowance of the amendment, [and] futility of  
12 amendment.”<sup>80</sup> Of these factors, “prejudice to the opposing party carries the most  
13 weight.”<sup>81</sup> Furthermore, if “it is clear that the complaint could not be saved by  
14 amendment, then dismissal without leave to amend is proper.”<sup>82</sup>

15 The Court finds that granting leave to amend would be futile and unduly  
16 prejudicial to Defendant. It would be futile for Plaintiffs to amend the Amended  
17 Complaint when the Court has determined that claim preclusion bars Plaintiffs’  
18 claims, and it would unduly prejudice Defendant to litigate a claim that fails as a  
19 matter of law. Thus, the Court recommends that Plaintiffs’ claims be dismissed with  
20 prejudice, without leave to amend.

## 21 **IV. CONCLUSION**

22 Plaintiffs’ claims are barred by the doctrine of claim preclusion because they

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23 <sup>78</sup> See *Patterson*, 303 P.3d at 498. Because the Court concludes that claim preclusion bars  
24 all of Plaintiffs’ claims, the Court declines to address Defendant’s alternative argument that  
25 Plaintiffs’ claims should be dismissed because they were brought outside their respective  
26 limitations or repose periods. See Docs. 23 at 8–12, 17; 25 at 2–6.

27 <sup>79</sup> *Crowley v. Bannister*, 734 F.3d 967, 797 (9th Cir. 2013) (emphasis, internal quotation  
28 marks, and citation omitted).

<sup>80</sup> *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008) (quoting *Foman v.*  
*Davis*, 371 U.S. 178, 182 (1962)).

<sup>81</sup> *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567 (2020) (citing *Eminence Capital, LLC v.*  
*Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)).

<sup>82</sup> *Huffman v. Lindgren*, 81 F.4th 1016, 1022 (9th Cir. 2023) (quoting *Salameh v. Tarsadia*  
*Hotel*, 726 F.3d 1125, 1133 (9th Cir. 2013)).

1 were or could have been brought in their previous suit against Defendant.  
2 Amendment of these claims would be futile and unduly prejudice Defendant.  
3 Therefore, the Court recommends that Defendant's Motion at Docket 23 be  
4 **GRANTED** and that Plaintiffs' claims be **DISMISSED with prejudice**.

5 DATED this 18th day of April, 2024, at Anchorage, Alaska.

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KYLE F. FEARLTON  
United States Magistrate Judge  
District of Alaska

### NOTICE OF RIGHT TO OBJECT

Under 28 U.S.C. § 636(b)(1), a district court may designate a magistrate judge to hear and determine matters pending before the Court. For dispositive matters, a magistrate judge reports findings of fact and provides recommendations to the presiding district court judge.<sup>83</sup> A district court judge may accept, reject, or modify, in whole or in part, the magistrate judge's order.<sup>84</sup>

A party may file written objections to the magistrate judge's order within 14 fourteen days.<sup>85</sup> Objections and responses are limited to five (5) pages in length and should not merely reargue positions previously presented. Rather, objections and responses should specifically identify the findings or recommendations objected to, the basis of the objection, and any legal authority in support. Reports and recommendations are not appealable orders. Any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the district court's judgment.<sup>86</sup>

<sup>83</sup> 28 U.S.C. § 636(b)(1)(B).

<sup>84</sup> *Id.* § 636(b)(1)(C).

<sup>85</sup> *Id.*

<sup>86</sup> See *Hilliard v. Kincheloe*, 796 F.2d 308 (9th Cir. 1986).